REMARKS

Reexamination and reconsideration of this application in view of the following remarks is respectfully requested. By this amendment, claims 1, 2, 3, 4, 5, 6, 8-14, 16, 17, 18, 20 and 21 are amended; claims 6, 7, 14, 15, 19, 22 and 23 are canceled; and new claim 24 is added. After this amendment, claims 1-5, 8-13, 16-18, 20-21 and 24 remain pending in this application.

Claim Rejections - 35 USC §112

Reconsideration of the rejection of claims 5-7, 13-15 and 21-23 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants regard as the invention, is respectfully requested in view of the amendments to claims 5, 13 and 21. Claims 6, 7, 14, 15, 22 and 23 were canceled.

Claim Rejections - 35 USC §101

Reconsideration of the rejection of claims 9-16 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter, is respectfully requested in view of the amendments to claims 9-13 and 16. Claims 14 and 15 were canceled. In claims 9-13 and 16, the phrase "computer readable medium" was changed to "computer readable storage medium". A storage medium is a physical structure. This change is supported in the specification in the paragraph that begins on page 28, line 3.

Claim Rejections - 35 USC §102

Reconsideration of the rejection of claims 1-4, 7-12, 15-20 and 23 under 35 U.S.C. §102(b) as being anticipated by Pham et al., (U.S. Pat. No. 4,750,116), hereinafter "Pham", is respectfully requested in view of the cancellation of claims 7, 15, 19 and 23, in view of the amendments to claims 1, 2, 3, 8, 9, 10, 11, 12 and 16, and for the following reasons.

Pham describes a system that manages hardware resources when more than one software application contends for a same hardware resource. Pham describes how and when conflicting

resources are claimed or sometimes "stolen" from another software application, and then returned after being used. In Pham, there is no discussion of whether a software application (once it has "stolen" hardware resources) can run on the electronic device.

On the other hand, the invention claimed in the present application concerns changing a hardware function (such as microprocessor clock speed and/or display refresh rate) to match the needs of a certain single software application.

The Examiner cited 35 U.S.C. §102(b), and a proper rejection requires that a single reference teach, i.e., identically describe, each and every element of the rejected claims as being anticipated by Pham. "To anticipate a claim, the reference must teach every element of the claim". See MPEP ¶2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Pham fails to disclose all the steps of amended claim 1. In particular, Pham fails to disclose the last step of amended claim 1, to wit:

> "determining whether the at least one application resource requirement can be met by the electronic device, wherein the at least one application resource requirement includes at least one of:
>
> average MIPS,
>
> lowest MIPS,
>
> peak MIPS,
>
> screen refresh rate, and
>
> I/O bandwidth"

The argument set forth above with regard to claim 1, also applies to independent claims 9 and 17.

Furthermore, claims 2-4 and 8 depend upon independent claim 1, claims 10-12 and 16 depend upon independent claim 9, and claims 18 and 20 depend upon independent claim 17, and

because dependent claims recite all the limitations of the independent claim, it is believed, for this additional reason, that dependent claims 2-4, 8, 10-12, 16 and 18 and 20 also recite in allowable form.

Accordingly, in view of the remarks above, in view of the amendments to claims 1, 2, 3, 8, 9, 10, 11, 12 and 16, in view of the cancellation of claims 7, 15, 19 and 23, and because Pham does not teach, anticipate, or suggest the presently claimed invention, the Applicants believe that the rejection of claims 1-4, 7-12, 15-20 and 23 under 35 U.S.C. §102(b) has been overcome. The Examiner should withdraw the rejection of these claims.

Claim Rejections - 35 USC §103

The Examiner rejected claims 5-6, 13-14 and 21-22 under 35 U.S.C. §103(a) as being unpatentable over Pham (U.S. Pat. No. 4,750,116) in view of Rawson et al., (U.S. Pat. No. 5,682,204), hereinafter "Rawson". Reconsideration of the rejection of claims 5-6, 13-14 and 21-22 is respectfully requested in view of the amendments to claims 5 and 13, in view of the cancellation of claims 6, 14 and 22, and for the following reasons.

The Applicants agree with the Examiner that Pham does not teach the steps of: increasing or decreasing at least one of the clock rate and the level of power consumption of the CPU (i.e., the processor) of the electronic device, and executing the application on the electronic device.

In rejecting claims under 35 U.S.C. §103, an Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to an Applicant.

The Applicants disagree with the Examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention, to include increasing the clock rate, or level of power consumption of the processor, during execution, as recited in claims 5, 13 and 21. The Examiner stated that a person would be motivated by a desire to extend the useful operating time of a battery-operated computer as indicated by Rawson. However, Rawson ***teaches against*** increasing the clock rate or level of power consumption of the processor during execution. If Rawson teaches anything in this regard, Rawson teaches decreasing the clock rate or level of power consumption of the processor.

Furthermore, claim 5 depends upon independent claim 1, claim 13 depends upon independent claim 9, and claim 21 depends upon independent claim 17, and because dependent claims recite all the limitations of the independent claim, it is believed, for this additional reason, that dependent claims 5, 13 and 21 also recite in allowable form.

Accordingly, in view of the remarks above, in view of the amendment to independent claims 1, 9 and 17, and because neither Pham, nor any combination of Pham and Rawson, teaches, anticipates or suggests the presently claimed invention, the Applicants believe that the rejection of claim 5-6, 13-14 and 21-22 under 35 U.S.C. §103(a) has been overcome. The Examiner should withdraw the rejection of this claim.

Conclusion

The foregoing is submitted as full and complete response to the Office Action mailed May 29, 2007. It is believed that the application is now in condition for allowance. Allowance of claims 1-5, 8-13, 16-18, 20-21 and 24 is respectfully requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless the Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Applicants acknowledge the continuing duty of candor and good faith in the disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment is limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

The present application, after entry of this Response, comprises seventeen (17) claims, including three (3) independent claims. The Applicants have previously paid for twenty-three (23) claims including three (3) independent claims. The Applicants, therefore, believe that a fee for claims amendment is currently not due.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No.: **50-1556**.

PLEASE CALL the undersigned attorney at (561) 989-9811, should the Examiner believe a telephone interview would help advance prosecution of the application.

Respectfully submitted,

Date: July 24, 2007

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